

Mail Stop Interference
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JOHN T. **GRAY**, RICHARD MULLIGAN,
AND JENG SHIN LEE,
Junior Party
(U.S. Patent 6,958,226),

v.

ALAN JOHN **KINGSMAN**, KYRIACOS MITROPHANOUS,
AND NARRY KIM,
Senior Party
(U.S. Application 10/351,938).
Patent Interference No. 105,672 (MPT)
(Technology Center 1600)

REDECLARATION – Bd. R. 203(c)

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3 The Board ordered senior party Kingsman to show cause why this
4 interference should continue as Kingsman's involved '938 application and Gray's
5 involved '226 patent are now assigned to the same real party in interest: Oxford
6 BioMedica (UK) Limited, Oxford BioMedica, plc, and BioMedica, Inc. (Paper 17,
7 p. 2, ll. 3-5). Kingsman responded to the Order to Show Cause by requesting that
8 judgment be entered against Gray's '226 patent and that the interference be
9 redeclared with a substitute count. (Paper 21, p. 1).

1 The interference was declared with a single count, Count 1, which reads as
2 follows:

3 A packaging cell line according to Claim 1 of U.S. Patent No. 6,958,226.
4 (Notice Declaring Interference, Paper 1, p. 5). Kingsman's response to the Order
5 to Show Cause requests that a new count be entered that includes Kingsman claims
6 60 and 71 and Gray claims 12, 15, 16, 17 and 20.

7 A conference call was held on May 29, 2009 at around 1:30 pm between Mr.
8 Kowalski, counsel for both Kingsman and Gray and Administrative Patent Judge
9 Michael Tierney. During the call, counsel reiterated its request for a new count
10 and specifically requested that Kingsman claim 60 be added to the count.

11 The Board is not entirely convinced that a new count is required in this
12 interference. A substitute count that includes both Gray claim 1 or Kingsman
13 claim 60 would not alter the claim correspondence or the accorded constructive
14 reduction to practice dates. The Board agrees however, that Gray and Kingsman
15 have employed different terminology to describe the interfering subject matter.
16 Accordingly, the Board concludes that a substitute count that includes Kingsman
17 claim 60 simplifies the claim correspondence and accorded benefit analysis. Based
18 on the very specific facts of this interference, the Board replaces Count 1 with new
19 Count 2, which reads as follows:

20 A packaging cell line according to Claim 1 of U.S. Patent No.
21 6,958,226 or a lentiviral production system according to Claim 60 of
22 U.S. Application 10/351,938.
23

24 The party's claim correspondence and accorded constructive reduction to practice
25 dates remain unchanged. Specifically, all of Gray and Kingsman's claims
26 correspond to Count 2 and Kingsman remains senior party with an earliest
27 accorded constructive reduction to practice date of February 17, 1998. (Paper 1,

1 pgs. 5-6).

2 It is:

3 Ordered that Count 1 be replaced with new Count 2.

4 Further Ordered that Gray and Kingsman's claim correspondence and
5 accorded constructive reduction to practice dates remain unchanged.

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10 cc: (electronic filing)

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12 Counsel for Junior Party Gray and Senior Party Kingsman:

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